BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE VARIANCE PERMIT GRANTED BY THE CITY OF SEATTLE TO BRUCE DENNIS AND APPROVED BY THE WASHINGTON STATE DEPARTMENT OF ECOLOGY SEATTLE SHORELINES COALITION, Appellant, v. STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, CITY OF SEATTLE AND BRUCE DENNIS, Respondents.	SHB No. 79-41 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the issuance of a shoreline variance permit to Bruce Dennis by the City of Seattle, and its approval by the Department of Ecology, came before the Shorelines Hearings Board, Nat W. Washington, Chairman, Chris Smith, James S. Williams and Robert S. Derrick, Members, in Seattle, Washington, on November 16, 1979. Nancy E. Curington, hearing examiner, presided.

Appellant was represented by its attorneys, Janet Quimby and Craig Gannett. Respondent Department of Ecology was represented by Jeff Goltz, Assistant Attorney General; respondent City of Seattle was represented by Ross Radley, Assistant City Attorney; respondent Bruce Dennis was represented by his attorney, John H. Strasburger.

Having heard or read the testimony, having examined the exhibits, having considered the parties' pre and post-hearing briefs, contentions and arguments; and the Board having served its proposed decision upon the parties herein, and having received exceptions thereto and replies to exceptions; and the Board having considered the exceptions and replies, and having granted the exceptions in part and denied said exceptions in part, the Shorelines Hearings Board now makes these

FINDINGS OF FACT

I

This matter arises from the issuance of a shoreline variance permit to Bruce Dennis (hereinafter "Dennis") by the City of Seattle (hereinafter "City") and approved by the Washington State Department of Ecology (hereinafter "DOE") for the construction of a single-family residence partially over water, with a deck and residential pier, south of Seward Park on Lake Washington, a shoreline of statewide significance in Seattle. The Seattle Shorelines Coalition (hereinafter "Coalition") appealed the shoreline variance permit issuance and approval to this Board. At the hearing DOE changed its position and admitted error in its action.

II

Respondent Dennis' property is zoned residential and is designated

urban residential in the City's Shoreline Master Program (hereinafter "SSMP"). The water area over which a part of the proposed project would be constructed is designated conservancy management. The property is vacant with the exception of a rock bulkhead at the water; a bluff steeply slopes from Rainier Avenue (which is about twenty-three feet above the surface of the lake), to the lake. Dennis' southwest property line lies midslope. Most of the homes in the area, including Dennis' neighbors, are built partially over the water with decks and residential piers.

III

The proposed residence, consisting of 833 square feet over land and 810 square feet over the water, would extend 20 feet over the water. A 22 foot deck (1034 square feet) and a 17 foot pier (102 square feet) would be constructed entirely over the water. All three structures would be built on pilings and would be in keeping with character of neighboring structures.

IV

The lot is 59 feet wide on the water with an area of 11,505 square feet. The land portion of the lot extends approximately 30 feet from the water line to the streetward property line. Presumably, a structure could be built solely on the land portion of the lot, although it would be considerably smaller than and out of character with neighboring residences.

V

The SSMP, identified in the record as Exhibit A-1, was adopted by

the City and approved by DOE. Appellants, and now DOE, contend that relief via the variance procedure is improper, and that even if it were proper, the requirements for granting a variance have not been met by Dennis. Respondents City and Dennis contend that the variance was proper; even if not proper, since the proposal lies partly in an urban residential shorelines designation and partly in a conservancy management shorelines designation, the Board should consider the entire proposal to fall within the urban residential shorelines designation, and thus requiring no variance.

VI

The SSMP states that the purpose of the urban-residential environment (hereinafter "U-R") is to protect areas appropriate primarily for residential uses, by maintaining the existing residential character in terms of bulk, scale, and general types of activities and developments. SSMP Section 21A.23. Under the SSMP, developments in the Conservancy Management Environment (hereinafter "C-M") are limited to those uses which are non-consumptive of the resources identified as being valuable and requiring protection. SSMP Section 21A.22. Single-family residential uses are permitted in the U-R environment; such uses are prohibited in the C-M environment. SSMP Section 21A.40. Piers are allowed in the C-M and U-R environments. SSMP Section 21A.40. New residential structures constructed over-water are prohibited. SSMP Section 21A.72. Bulk requirements of the master program limit structure heights to a maximum of 35 feet on land and allow a maximum height of 15 feet for over-water accessory structures. SSMP Section 21A.35. The height of

structures is determined by measuring from the average grade of the lot immediately prior to the proposed development and after any permitted landfill, to the highest point of the structure. SSMP Section 21A.33.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding. Appellants have standing to bring this appeal.

II

In an appeal of any permit issuance, the party attacking the validity of such permit has the burden of proof. RCW 90.58.140(7).

III

The permit at issue herein is tested for consistency with the policy of the Shoreline Management Act "and, after adoption or approval, as appropriate, the applicable guidelines, regulations or master program." RCW 90.58.140(1).

IV

Criteria for DOE's approval of variance permits is apparently found in WAC 173-14-150. The regulation provides criteria only for "bulk" variances and not for "use" variances. DOE has nonetheless adopted "use" variance criteria for the Seattle master program in WAC

173-19-250(21). Thus, DOE, in its review of use variances, should apply the criteria found in the approved Seattle master program.

V

A variance is required in order to allow construction of the proposal in this case, due to the location of the proposed development in the particular shorelines designations of the SSMP. Although the proposed residence would be allowed on land portion of the lot, designated U-R, the C-M designation on the water portion, prohibits such use. Moreover, the SSMP prohibits construction of residential structures over water.

VI

The SSMP states that a shoreline variance will be granted only after the applicant has demonstrated that he meets several requirements[1]. If any one of the requirements is not met, the shoreline variance permit cannot issue. In this instance, the

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1. Section 21A.61 Shoreline Variances.

> In specific cases the Director with approval of the Department of Ecology may authorize variances from specific requirements of this Article when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the shoreline master program. A shoreline variance will be granted only after the applicant can demonstrate the following:
>
> (a) That if he complies with the provisions of the master program, he cannot make any reasonable use of this property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the program is not a sufficient reason for a variance.
>
> (b) That the hardship results from the application of the requirements of the Act and shoreline master programs, and

applicant showed to the satisfaction of both the City and DOE that the requirements were satisfied. It is appellant's burden of proof to show that the actions were in error.

In the instant case, the appellant failed to meet its burden of proof that the applicant has "any reasonable use of his property." Similarly, the appellant failed to show that the applicant's hardship did not result from the application of the requirements of the SMA and SSMP, that the variance granted would not be in harmony with the general purpose and intent of the SSMP, and that the public welfare and interest would not be preserved. Accordingly, the shoreline variance permit as issued by the City and approved by the DOE should be affirmed.

VII

Appellant's remaining contentions are without merit or not based upon evidence in this record. We need not address the City's contention regarding the "split lot" theory as applied to shoreline regulations.

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1. Cont.

not, for example, from deed restrictions or the applicant's own actions.

(c) That the variance granted will be in harmony with the general purpose and intent of the shoreline master program.

(d) That the public welfare and interest will be perserved.

In authorizing a shoreline variance, the Director may attach thereto such conditions regarding the location, character or other features of a proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this Article and in the public interest.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Shorelines Hearings Board enters this

ORDER

The shoreline variance permit granted to Bruce Dennis by the City of Seattle and approved by the Department of Ecology is affirmed.

DATED this 5th day of ~~May~~ June, 1980.

SHORELINES HEARINGS BOARD

NAT W. WASHINGTON, Chairman

DAVID AKANA, Member

JAMES S. WILLIAMS, Member

ROBERT S. DERRICK, Member

WILLIAM A. JOHNSON, Member

WASHINGTON, CONCURRING:

I concur in the result reached by Board members Robert S. Derrick, William A. Johnson and James S. Williams, a majority of the members now constituting the Shorelines Hearings Board, and in their Order that the shoreline variance permit granted to Bruce Dennis by the City of Seattle be affirmed, but for somewhat different reasons. I also concur in the majority's Conclusion of Law that the use variance criteria found in the approved Seattle Master Program should be utilized.

I adopt the Findings of Fact of the majority.

I adopt the Conclusions of Law of the majority, but I am expressing more fully my reasons for adopting Conclusions IV and VI.

The pivotal issue is whether DOE's variance regulation, WAC 173-14-150[1] as last amended in 1978 has the effect of prohibiting

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1. The portion of the WAC 173-14.50 which is particularly pertinent to the issue here reads as follows:

> WAC 173-14-150 REVIEW CRITERIA FOR VARIANCE PERMITS. The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

The full text of WAC 173-14-150 is attached hereto as Appendix "A".

"use" variances. The majority concludes that it does not, and I agree.

To the extent that WAC 173-14-150 covers and provides criteria for the approval of bulk, dimensional or performance (area) variances it meets the requirements of RCW 90.58.100(5) and is a valid rule, but to the extent it may prohibit all use variances, it is in violation of the policy of the Shoreline Management Act and RCW 90.58.100(5).

The Department of Ecology (DOE) has the power to adopt regulations providing criteria for evaluating variances, but they must be consistent with the Shoreline Management Act and with RCW 90.58.100(5) in particular.

A key part of RCW 90.58.100(5)[2] states that each master program shall contain provisions for varying use regulations including provisions for conditional uses and variances. The statute further provides that the concept of subsection (5) shall be incorporated in rules adopted by the department.

The question presented here is: Can DOE comply with this directive by providing only for "area" variances and ignoring "use"

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2. RCW 90.58.100(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

variances. The answer depends on the meaning of the word "variance" as intended by the legislature.

It must be assumed that the legislature in using a zoning term without giving it a special definition or making any exceptions intended it to have its commonly understood meaning.

Anderson, American Law of Zoning, 2nd. Ed., a work frequently cited by the Shorelines Hearings Board and Washington appellate courts, at Sec. 18.02 (citing many cases in support) defines "variance" as follows:

> "A variance is an authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance or use of land which is prohibited by a zoning ordinance. It is a right granted by a board of adjustment pursuant to power in such administrative body by statute or ordinance and is a form of administrative relief from the literal import and strict application of zoning regulations."

This definition by Anderson makes it clear that "prohibited use" variances are included as an integral part of the definition of the word "variance." Anderson also makes it clear that the word "variance" includes both "use" and "area" variances. In sec. 18.46 he defines both kinds as follows:

> "A use variance authorizes a use of land which otherwise is proscribed by zoning regulations. An area variance authorizes deviation from restrictions upon the construction and placement of buildings and structures which are employed to house or otherwise serve permitted uses."

By using the word "variance" alone in RCW 90.58.100(5) and without any special definition or exceptions, it appears that the legislature

did not intend variance permits to be limited to area variances. This interpretation is strongly supported by the inclusion in subsection 100(5) of the phrase "unnecessary hardship." This phrase is primarily associated in the law with use variances.[3]

The conclusion that is reached because of the legislature's of the word "variance" without making any exceptions, is fortified by the fact that the legislature also directed in 90.58.100(5) that relief be granted from unnecessary hardships caused by the application of "use regulations" without making any exception as to the type of "use regulation" intended.

RCW 90.58.100(5) states, "Each master program shall contain provisions to allow for the varying of the application of use regulations of the program . . ." (emphasis supplied) This provision contains no exceptions, so it must have been intended to apply to all use regulations adopted by an agency. A master program provision which sets forth a use but prohibits it is unquestionably a "use regulation." It follows therefore that agencies must provide a variance procedure to insure that the strict implementation of prohibited use regulations will not create unnecessary hardships. That DOE is required to incorporate the concept 90.58.100(5) into its own rules, leads to the conclusion that DOE's own rules must also

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3. Anderson, American Law of Zoning, 2d. Ed. Sec. 18.08, 18.09, 18.10.

contain provisions for varying all use regulations including prohibited use regulations.

It must be remembered that the Shoreline Management Act established a new and untried long range program. It appears to have been the intention of the legislature to prevent use regulations of any agency from being so rigidly set that the only relief available would be through the long and uncertain process of amending the master program. To insure against unyeilding rigidity, a safety valve in the form of conditional use permits and variances was provided.

RCW 90.58.100(5) provides that variances are one of the devices to be used to insure that strict implementation of a master program will not create unnecessary hardship or thwart the policy set forth in RCW 90.58.020. Since some of the most severe hardships can come from the strict implementation of prohibited use regulations, it seems clear that the intent of RCW 90.58.100(5) would be thwarted by a blanket elimination of use variances.

If possible WAC 173-14-150 should be construed in such a way as to harmonize it with the Shoreline Management Act, and not be held to be invalid because it fails to provide criteria for reviewing use variances. The method for harmonizing has already been charted by the majority decision in City of Seattle v. Department of Ecology, SHB No. 78-21 (1978) at page 3. There it was held that DOE in promulgating WAC 173-14-150 had excluded use variances from the operation of the regulation. In harmonizing the regulation with the Shoreline Management Act, the majority held that DOE "does not exceed its statutory authority by not going far enough." In other words DOE did

not exceed its authority by failing to provide criteria for evaluating use variances in WAC 173-14-150.[4] It was on the basis of this holding that the majority decision upheld the validity of the regulation. The net effect of this decision was to limit the application of newly amended WAC 173-14-150 to "area" variances only.

WAC 173-14-150 can be reconciled with RCW 90.58.100(5) and the policy of the shoreline act, and can continue in force as a valid regulation, but only for the limited purpose of evaluating area variances. The limiting language in WAC 173-14-150 states:

> "The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards . . ." (area standards) (parenthesis supplied)

This provision is in the nature of a definition which merely limits the application of variances for the purpose of WAC 173-14-150 to "area" variances only, and does not amount to a blanket prohibition of "use" variances. Thus DOE was left free to later adopt a separate and distinct regulation relating only to "use" variances.

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4. The holding on which the Seattle decision was based reads as follows:

> "The DOE's failure to provide for the varying of a prohibited use, even if it were required to provide for such under RCW 90.58.100(5), is not a ground to invalidate the rules which are promulgated. DOE does not "exceed" its statutory authority by not going far enough."

Unless WAC 173-14-150 can be reconciled in this manner, it must be held to be invalid as an attempt to completely prohibit use variances. Such a prohibition exceeds DOE's statutory authority, because RCW 90.58.100(5) by its terms requires provision for "use" variances as well as for "area" variances.

DOE does not have the power to prohibit that which the statute requires, and to do so would be to exceed its statutory authority. Exceeding statutory authority is one of the grounds provided in RCW 34.04.070(2) for invalidating a rule or regulation adopted by a state agency.

In promulgating a new regulation relating only to "use" variances DOE could logically continue to utilize the strict "any reasonable use" test found in WAC 173-16-070, and in many master programs including Seattle's, rather than the less strict "a reasonable use" provision found in the 1978 amendment to WAC 173-14-150. This is in keeping with accepted variance practice. Anderson points out that in most states "area" variances are approved on less strict standards than those required to sustain a "use" variance. Anderson, American Law of Zoning, 2d. Ed. Sec. 18.46, page 266.

Appellant has presented a different view of the holding of the majority decision in Seattle, supra, and appears to contend that the majority held that the new rule, WAC 173-14-150, had the effect of actually forbidding variances of prohibited uses. It is my conclusion that appellant is in error. The holding upon which the decision turned is stated by the majority in two short sentences:

> "The DOE's failure to provide for the varying of a prohibited use, even if it were required to provide

> for such under RCW 90.58.100(5), is not a ground to invalidate the rules which are promulgated. DOE does not "exceed" its statutory authority by not going far enough."

DOE did not forbid or outlaw variances of prohibited uses. It merely failed to provide for them.

Appellant contends that the majority in Seattle held that to allow a variance from a prohibited use would violate the policy of the Shoreline Management Act. Appellant appears to have to relied upon a sentence (underlined below) which was not a part of the majority's holding, but was contained in the advisory part of the decision which is largely applicable to the local governments effected by the rule and the decision. The advisory portion starts near the top of page 4 with the admonition: "Prohibition of a use requires careful consideration." Then follow two informative sentences, the second being the one which is emphasized by appellant:

> "a use which is not reasonable and appropriate use" of shorelines (RCW 90.58.020) can be prohibited by a master program in favor of a use which is reasonable and appropriate. (emphasis supplied) If a prohibited use can be permitted through the vehicle of a variance, it would be done in violation of the policy of the Shoreline Management Act (SMA). (underline supplied)

In the completely underlined sentence which is being emphasized by appellant, the key words are the term "prohibited use." In the context in which it appears, the term "prohibited use" is obviously used as a short synonym for the long phrase "a use which is not

reasonable or appropriate,"[5] which is found in the sentence preceding it. Read in context, the reader understands the sentence to mean: "If 'a use which is not reasonable or appropriate' can be permitted through the vehicle of a variance, it would be done in violation of the policy of the Shoreline Management Act (SMA)." This sentence appears to have been used merely to illustrate that the wrong use of a variance violates the policy of the SMA.

The next two sentences continue the "reasonable appropriate use" discussion, but show the other side of the coin. These two sentences point out the danger that prohibited use regulations may be used to prohibit uses which may be reasonable and appropriate under certain circumstances, and further point out that failing to foster "all reasonable and appropriate" use would thwart the policy of RCW 90.58.020.

I conclude that the sentence appellant contends is a holding that a variance from a prohibited use would violate the policy of the SMA, is not a holding, but instead is merely an advisory sentence.

I conclude that DOE has the statutory authority to promulgate a new rule establishing criteria for evaluating variances of prohibited

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5. In the context of RCW 90.58.020 a "prohibited use" may be defined as a use which is not reasonable or appropriate in a specified zone or environment.

use regulations.[6] However, until this is done the only use variance standards will be found in those local master programs whose use variance criteria is consistent with the variance requirements which are set forth in WAC 173-16-070. In those instances where a master program is found by DOE not to be consistent in certain specified respects, I conclude that the provisions of WAC 173-16-070 may be applied, but only to the extent necessary to supply the specified deficiencies.

WAC 173-16-070 appears to have been enacted in 1972 by DOE to fulfill the requirements of RCW 90.58.100(5), 90.58.140(3) as to rules and to fulfill the requirements of 90.58.60 as to guidelines. It thus has performed the dual function of being both a guideline and a rule. It is arguable that as a guideline its function may well have ceased as to each local government upon the approval by DOE of its master program, (RCW 90.58.030(3)(a) and 90.58.140(2)(b)), except possibly to be utilized later to evaluate master program amendments. As a rule, unlike a guideline, the life span of WAC 173-16-070 is not tied in any way to master program adoption. Thus I conclude that WAC 173-16-070 could at least be utilized to provide use variance evaluation criteria where the use variance criteria of a local government is not consistent with it. A review of the variance regulations in the master programs of a number of cities and counties indicates that

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6. RCW 90.58.100(5), RCW 90.58.140(3) and RCW 90.58.200

many are inconsistent in some respects with WAC 173-16-070. In particular many do not have the strong provision regarding "any reasonable use" found in WAC 173-16-070.

I agree with the conclusion and reasoning in Conclusion of Law VI. In addition, however, I believe the variance permit in this case can be held to be in compliance with applicable use variance criteria on the basis of the precedents established in Lavalley v. Department of Ecology, PCHB No. 78-7 (1978) and Miller v. Department of Ecology, PCHB No. 78-9 (1978). The prohibited use variance granted in this case complies with the variance criteria of the SSMP in all respects, as did the variances in Lavalley and Miller. This variance complies with the use variance criteria of WAC 173-16-070 to virtually the same degree that Lavalley and Miller complied with practically the same criteria contained in WAC 173-14-150 before the 1978 amendment.

The strict "any reasonable use" standard was applied here and in the Lavalley and Miller cases to an extraordinary set of physical factors which, in all probability, will be found in but few other cases. In each of these cases it has been applied to a small tract in a situation where there was a single vacant waterfront lot with houses and decks built over water on both immediately adjacent lots. In each case the waterward projecting homes on both sides substantially restricted the view from the land portion of the single lot between. In each case the applicant for variance has not been allowed to project his structures beyond those of his immediate neighbors on both sides. In each case the proposed development has been in harmony with the existing neighborhood, and has been in harmony with the general

purpose and intent of the master program. In each case the narrow vacant waterfront lot between two existing waterward projecting homes was contributing no appreciable shoreline benefits to the public. An application for a variance to build over water where there are two or more vacant lots between waterward projecting homes would present a different factual situation then presented here and in Lavalley and Miller as far as the "any reasonable use" requirement is concerned.

The standards for securing a variance of a prohibited use should be strict and the justifying conditions should be extraordinary. It should be extremely difficult to secure a prohibited use variance,[7] but it should not be impossible.

NAT W. WASHINGTN, Chairman

7. Anderson, American Law of Zoning, 2d. Ed. Sec. 18.02, p 137 and Sec. 18.03, p 143.

AKANA, concurring:

I concur in the findings and result of the majority. There is some question as to the precise criteria which should be applied in this case. The Department of Ecology has spawned a number of regulations concerning variances which are relevant to our inquiry: WAC 173-14-150 (permit program); WAC 173-16-070 (guidelines); WAC 173-19-250(21) (master program). The 1978 amendment to WAC 173-14-150, which creates a difference from the other rules by the absence of use variance criteria, has brought uncertainty as to what rule should apply here. The Shorelines Management Act makes the approved master program the operative regulatory document and the use variance criteria found in that document should be used. RCW 90.58.100; RCW 90.58.140.

David Akana

DAVID AKANA, Member

APPENDIX "A"

WAC 173-14-150 Review criteria for variance permits. The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances should be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated by the department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable permitted use of the property.

(b) That the hardship described in WAC 173-14-150(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

(e) That the public interest will suffer no substantial detrimental effect.

(3) Variance permits for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within marshes, bogs, or swamps as designated by the department pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes a reasonable permitted use of the property.

(b) That the hardship described in WAC 173-14-150(3)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

(e) That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.

(f) That the public interest will suffer no substantial detrimental effect.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments in the area where similar circumstances exist the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce substantial adverse effects to the shoreline environment. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 77-7), § 173-14-150, filed 6/14/78; Order DE 76-17, § 173-14-150, filed 7/27/76; Order DE 75-22, § 173-14-150, filed 10/16/75.]